

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
HALLSDALE-POWELL UTILITY)	
DISTRICT AND)	
NORRIS BROS. EXCAVATING, LLC)	
)	
RESPONDENTS)	CASE NUMBER WPC08-0106

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

II.

Hallsdale-Powell Utility District (hereinafter the “Respondent HPUD”) is a publicly owned, governmental utility district that owns and operates a municipal wastewater treatment system providing service to residents in Anderson, Union, and Knox Counties, Tennessee. Service of process may be made on the Respondent through Mr. Marvin L. Hammond, President/CEO, Hallsdale-Powell Utility District STP, at 3745 Cunningham Drive, Knoxville, Tennessee 37918.

III.

Norris Bros. Excavating, LLC (hereinafter “Respondent NBE”) is a registered company licensed to do business in the State of Tennessee. Respondent HPUD named Respondent NBE as the contractor on the completed Notice of Intent (NOI). Service of process may be made on Respondent NBE through Justin L. Norris, Registered Agent at 107 Rodgers Road, Crossville, Tennessee 38572.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VIII.

The unnamed tributary to Bull Run Creek, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

IX.

On July 26, 2007, Respondent HPUD submitted an application to the Knoxville Environmental Field Office (KEFO), requesting written ARAP authorization for the installation of a new 20- inch water main with two stream crossings at the site. The division issued written authorization for these activities effective August 30, 2007.

X.

On December 16, 2007, a NOI, SWPPP, and appropriate fee were submitted to the KEFO by Respondent HPUD, requesting coverage under the TNCGP for construction activities at the site. Respondent NBE was identified on the NOI as the contractor. The division issued TNCGP coverage to Respondent HPUD on September 4, 2007.

XI.

On April 17, 2008, division personnel conducted a site inspection and observed Respondent NBE excavating a trench across Bull Run Creek and installing a water line without diverting flow around the construction area, and without adequate erosion prevention and sediment control (EPSC) measures in place. Division personnel observed a sediment plume extending downstream for approximately 2 miles. It was also noted that the limitations and conditions set forth in the *ARAP for Utility Line Crossings* were not met. Respondent NBE violated the conditions of the permit, by failing to separate the trench excavation from flowing waters, failing to install adequate EPSC measures, and causing a condition of pollution.

XII.

On April 18, 2008, the division conducted a follow-up inspection at the site and noted that the trench had not been backfilled, the banks were not stabilized, and EPSC measures were not installed.

On a separate visit later that day, division personnel observed that the trench had been filled and work had begun to stabilize the banks.

XIII.

On April 21, 2008, division personnel conducted a site inspection and observed that the trench on the north side of Bull Run Creek was dewatered without adequate treatment and the pumped water had entered the unnamed tributary (UNT) to the north causing a significant color contrast in the UNT and Bull Run Creek.

In addition to the unnamed tributary and Bull Run Creek having color contrast, it was observed that the silt fence along the unnamed tributary was not entrenched properly and sediment had migrated offsite and onto the road.

XIV.

On April 22, 2008, the division issued a Notice of Violation (NOV) to the Respondent HPUD and Respondent NBE for the violations observed during the April 17th, 18th, and 21st inspections at the site. In the NOV, the division required the Respondents to install and maintain appropriate EPSC measures to prevent further releases of sediment off site.

Division personnel requested that the Respondents attend a compliance review meeting on May 6, 2008, at the KEFO.

XV.

On April 24, 2008, Robert G. Campbell sent notification to Respondent NBE and a copy to division personnel, stating that they were in violation of the terms of their contract with Respondent HPUD for the installation of a new 20-inch water main and Respondent NBE will be required to pay all fines, remediation, or other costs that may arise from this action.

XVI.

On May 6, 2008, the Respondents attended a compliance review meeting at the KEFO. Topics discussed at the meeting included: reasons the permit conditions were not met, approaches to stabilize the stream and streambanks, and instructions to submit a restoration plan within 15 days.

XVII.

On May 15, 2008, the division received the restoration plan. The Respondents restoration plan was approved and they are required to contact the division prior to beginning restoration.

XVIII.

During the course of investigation, the division incurred DAMAGES in the amount of THREE HUNDRED TWENTY DOLLARS AND SEVENTEEN CENTS (\$320.17).

VIOLATIONS

XIX.

By failing to comply with the terms and conditions of the TNCGP and failing to carry out work or activities in conformance with approved plans and ARAP permit as authorized, the Respondents have violated T.C.A. §§ 69-3-108(a)(b), and 114(b), which state in part:

§ 69-3-108(a) states, in part:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XX.

By causing a condition of pollution in the unnamed tributary to Bull Run Creek, the Respondents have violated T.C.A. Section 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall implement appropriate EPSC measures designed by a professional engineer or landscape architect to assure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within 15 days of receipt of this Order to the manager of the Division of Water Pollution Control located at the Knoxville Environmental Field Office (KEFO), located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondents shall maintain appropriate EPSC measures to assure that no additional material leaves the site and enters waters of the state. The EPSC measures shall be maintained until permanent erosion preventive vegetative cover is established.

3. The Respondents shall, within 30 days of receipt of this Order, initiate the previously approved restoration plan submitted on May 15, 2008. The written approval of the restoration plan by the division constitutes authorization for sediment removal from the affected areas downstream of the site and restoration of the unnamed tributary and no additional ARAP coverage is required. The Respondents shall submit written notification to the division that work has begun at the time approved actions are initiated. The Respondents shall submit the written notification to the manager of the Division of Water Pollution Control located at the KEFO at the address shown above in Item 1.
4. The Respondents shall, within 90 days of initiating the approved actions, complete the restoration plan and submit written notification of completion to the division. The Respondents shall submit the written notification to the manager of the Division of Water Pollution Control located at the KEFO at the address shown in above in Item 1.
5. The Respondents shall, within six months of receipt of this ORDER, provide documentation of attendance and successful completion of the department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects to the manager of the Division of Water Pollution Control located at the KEFO at the address shown above in Item 1. Information may be found on the program website at <http://www.tnepsc.org/>.
6. The Respondents shall pay DAMAGES to the division in the amount of THREE HUNDRED TWENTY DOLLARS AND SEVENTEEN CENTS (\$320.17) within 30 days of receipt of this ORDER.

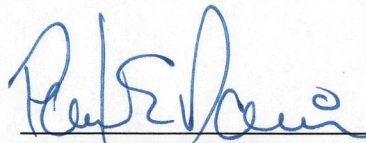
7. The Respondents shall pay a CIVIL PENALTY of FORTY-ONE THOUSAND DOLLARS (\$41,000.00) to the division, hereby ASSESSED to be paid as follows:
- a. The Respondents shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of TEN THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$10,250.00).
 - b. If the Respondents fail to comply with Part XXI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
 - c. If the Respondents fail to comply with Part XXI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
 - d. If the Respondents fail to comply with Part XXI, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable within 30 days of default.
 - e. If the Respondents fail to comply with Part XXI, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable within 30 days of default.
 - f. If the Respondents fail to comply with Part XXI, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$4,750.00), payable within 30 days of default.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 28th day of May 2008.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.